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FILED

OCT 11 2005

HEARING OFFICER OF THE
SUPREME COURT OF ARIZONA
BY *[Signature]*

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5
6 BEFORE A HEARING OFFICER
7 OF THE SUPREME COURT OF ARIZONA

8 In the Matter of a Suspended Member of)
9 the State Bar of Arizona,)

No. 04-1678, 04-1897

10 CINDY L. WAGNER,
11 Bar No. 013700,

AMENDED HEARING OFFICER'S
REPORT AND RECOMMENDATIONS

12 Respondent.
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14 The Hearing Officer originally issued his report and recommendations in this
15 case on October 4, 2005. This amended report is issued to correct the docketing
16 number, which was originally incorrectly listed as 05-6000, and to correct some other
17 minor typographical errors.

18 Cindy L. Wagner ("Wagner") appeared as an attorney in Navajo County Superior
19 Court while she was suspended for failing to comply with mandatory continuing legal
20 education requirements. In another case pending in Federal District Court, Wagner
21 failed to comply with an order regarding the preparation of a joint case management
22 plan. She then failed to respond to an order to show cause why she should not be
23 sanctioned for her deficient representation, and did not appear at the hearing on the
24 order to show cause. She then failed to respond to inquiries from the State Bar, and did
25 not respond to this disciplinary action.

26 As a result, the Hearing Officer recommends that she be disbarred.
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I. PROCEDURAL HISTORY

The probable cause orders in these matters were issued against respondent Cindy L. Wagner ("Wagner") on February 17, 2005. The complaint was filed on May 27, 2005, and copies were mailed by certified mail to Wagner at her addresses of record on June 2, 2005. Wagner signed a certified mail receipt for the complaint on June 3, 2005. (See Exhibits 3 and 4). Wagner failed to file an answer, and on June 28, 2005, a notice of default was filed and mailed to Wagner at the same addresses. Wagner still did not answer, and on July 20, 2005, default was entered against Wagner. A Hearing on aggravation and mitigation was conducted on August 22, 2005. Wagner failed to appear at the hearing.

II. MATTERS DEEMED ADMITTED

Because Wagner did not file an answer in this matter, and default was entered against her, the following matters are deemed admitted pursuant to Rule 57(d), Ariz. R. S. Ct.

1. At all relevant times, Respondent was an attorney licensed to practice law in Arizona, having been admitted to practice in this state on May 18, 1991.

2. On or about March 25, 2005, Respondent was summarily suspended for failing to comply with mandatory continuing legal education ("MCLE") requirements.

3. As of the date the complaint was filed, Respondent remained suspended pursuant to Rule 45(h), Ariz. R. S. Ct.

4. On or about August 20, 2004, Respondent was summarily suspended for failing to comply with MCLE requirements.

5. On or about September 23, 2004, Respondent appeared in Navajo County Superior Court representing a father in a child-dependency case, in file no. JD 2003-0080, before Judge Thomas L. Wing.

6. After Respondent appeared in court, Judge Wing learned from his judicial assistant that Respondent was suspended from the practice of law.

1 7. On or about October 5, 2004, Judge Wing contacted the State Bar of
2 Arizona regarding Respondent's appearance in his court on behalf of her client while on
3 suspension.

4 8. On or about October 10, 2004, Respondent was reinstated as a member of
5 the State Bar.

6 9. By letter dated November 12, 2004, mailed to Respondent's address of
7 record with the State Bar, the State Bar informed Respondent of the allegations received
8 from Judge Wing concerning her conduct.

9 10. The State Bar's letter requested that Respondent respond to the allegations
10 within 20 days.

11 11. In or about November 2004, Respondent called State Bar Senior Counsel
12 asserting that she should never have been suspended for MCLE requirements, the State
13 Bar had made a mistake and she was closing her law practice and leaving the state.

14 12. State Bar Senior Counsel indicated to Respondent that she needed to
15 respond to the November 12, 2004, letter and answer the complaint.

16 13. Respondent failed thereafter to respond to the November 12, 2004, letter.

17 14. On December 29, 2004, State Bar Senior Counsel sent a reminder letter to
18 Respondent referencing the letter dated November 12, 2004, and requested a response
19 within 20 days. Respondent failed to respond to the reminder letter.

20 15. Respondent knowingly failed to respond to a lawful demand for
21 information from the State Bar; practiced law while administratively suspended;
22 engaged in conduct prejudicial to the administration of justice; willfully violated a rule
23 or order of the court; refused to cooperate with the State Bar; and failed to furnish
24 information to or respond promptly to an inquiry from the State Bar.

25 16. Respondent's conduct as described in count I of the complaint violated
26 Rule 42, Ariz. R. S. Ct., specifically ERs 5.5, 8.1 and 8.4(d), and Rules 53(c), (d) and
27 (f), Ariz. R. S. Ct.
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1 17. In or about April 2004, Respondent represented Edward Tomblin Rains
2 ("Mr. Rains"), plaintiff in Rains, et al v. Navajo County, et al, CV 03-2210, in U. S.
3 District Court for the District of Arizona, assigned to the Honorable James A. Teilborg.

4 18. On or about April 16, 2004, Respondent filed a motion to withdraw as
5 counsel.

6 19. On or about June 7, 2004, Judge Teilborg denied Respondent's motion to
7 withdraw as counsel due to lack of plaintiff consent.

8 20. Judge Teilborg awarded attorney's fees to the defendant and ordered that
9 Respondent pay fees of \$196 as a sanction.

10 21. On or about October 6, 2004, Respondent submitted a second motion to
11 withdraw containing plaintiff's consent to Judge Teilborg via fax to his chambers.

12 22. Judge Teilborg granted Respondent's second motion to withdraw and
13 noted that Respondent had not paid the sanction previously imposed on June 7, 2004.

14 23. On or about October 15, 2004, Judge Teilborg ordered a show cause
15 hearing set for November 8, 2004, at which Respondent was to show cause as to why
16 she should not be sanctioned and/or reported to the State Bar for her deficient conduct
17 in representing Mr. Rains.

18 24. Respondent was further ordered to file a written brief no later than
19 November 1, 2004, addressing:

20 a. Her failure to cooperate with defense counsel to prepare a
21 joint proposed case-management plan, thus violating the court's order
22 setting Rule 16 scheduling conference;

23 b. Her filing of a unilateral case-management plan that did not
24 include the information required by the order setting Rule 16 conference;

25 c. Her failure to correct the deficiencies noted in the court's
26 order denying her initial motion to withdraw, causing the court to hold a
27 hearing to determine the status of her client's case and representation; and
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1 d. Her failure to contact her client to inform him of the status
2 hearing as directed in the court's order.

3 25. Respondent failed to file the court-ordered written brief.

4 26. On November 8, 2004, the show-cause hearing commenced. Respondent
5 was not present.

6 27. On November 8, 2004, Judge Teilborg ordered the clerk of the court to
7 forward copies of his October 15, 2004, and November 8, 2004, orders and a transcript
8 of the show-cause hearing to the State Bar.

9 28. By letter dated November 16, 2004, mailed to Respondent's address of
10 record with the State Bar, the State Bar informed Respondent of the allegations received
11 from Judge Teilborg concerning her conduct.

12 29. The State Bar's letter requested that Respondent respond to the allegations
13 within 20 days.

14 30. Respondent failed to respond to the November 16, 2004, letter.

15 31. On December 29, 2004, State Bar Senior Counsel sent a reminder letter to
16 Respondent referencing the letter dated November 12, 2004, and requested a response
17 within 20 days. Respondent failed to respond to the reminder letter.

18 32. Respondent failed to communicate with her client; failed to make
19 reasonable efforts to expedite litigation consistent with the interests of her client; was
20 unfair to opposing party and counsel; knowingly failed to respond to a lawful demand
21 for information from the State Bar; engaged in conduct prejudicial to the administration
22 of justice; willfully violated a rule or order of the court; refused to cooperate with the
23 State Bar; and failed to furnish information to or respond promptly to an inquiry from
24 the State Bar.

25 33. Respondent's conduct as described in count II of the complaint violated
26 Rule 42, Ariz. R. S. Ct., specifically ERs 1.4, 3.2, 3.4, 8.1 and 8.4(d), and Rules 53(c),
27 (d) and (f), Ariz. R. S. Ct.
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1 **III. WAGNER'S FAILURE TO COOPERATE WITH THE STATE BAR**

2 As discussed in paragraphs 9-14, and paragraphs 28-31 of the Complaint,
3 Wagner failed to respond to the State Bar's request for information relating to her
4 alleged violations. She also failed to respond to the Complaint, or to participate in these
5 proceedings. As an officer of the Court, Wagner's duties included the obligation to
6 fully and actively cooperate with the bar when her conduct was called into question. *In*
7 *re Brown*, 184 Ariz. 480; 483, 910 P.2d 631, 634 (1996).

8 Failure to respond to inquiries from the State Bar shows a
9 disregard for the Rules of Professional Conduct and borders on
10 contempt for the legal system. . . . Inaction serves to undermine the
11 profession's efforts at self-regulation, damaging both its credibility
and reputation. Additionally, respondent's disregard of court orders
casts a shadow over the integrity of the justice system.

12 *Id.* (citations omitted). *See also In re Meyer*, 2000 Ariz. LEXIS 96 at *22 (2000)
13 (failure to cooperate with State Bar's investigation is indicative of contempt for the
14 legal profession and disciplinary proceedings). "By [her] failure to respond and failure
15 to respond completely to the State Bar's investigation, Respondent breached [her] duty
16 to maintain the integrity of the profession and uphold the self-regulation that is vital to
17 the disciplinary system." *In re Rojas*, 2001 Ariz. LEXIS 212 at *13 (2001).

18 Wagner's multiple instances of failing to respond to the State Bar, or to this
19 disciplinary proceeding, borders on contempt. *In re Buffenstein*, 2002 Ariz. LEXIS 29
20 at *12 (2002).

21 **IV. VIOLATIONS**

22 As a result of the default, Wagner has admitted that she committed the following
23 violations:

<u>Ethical Rule</u>	<u>Number of Violations</u>
ER1.4 (Communication)	One
ER3.2 (Expediting Litigation)	One
ER3.4 (Knowingly Disobey Obligation to Court)	One
ER 5.5 (Unauthorized Practice of Law)	One

1	ER8.1 (Failure to Respond to Disciplinary Authority)	Two
2	ER8.4(d) (Conduct Prejudicial to Justice)	Two
3	Rule 53(c) (Willful Violation of Court Order)	Two
4	Rule 53(d) (Refusal to Cooperate in Discipline)	Two
5	Rule 53(f) (Failure to Furnish Information)	Two

6 **V. SANCTION**

7 **A. General Approaches to Discipline of Lawyers**

8 The purpose of lawyer discipline is not to punish the lawyer, but to protect the
9 public and deter future misconduct. *In re Fioramonti*, 176 Ariz. 182, 187, 859 P.2d.
10 1315, 1320 (1993). Another purpose is to instill public confidence in the Bar's
11 integrity. *Matter of Horowitz*, 180 Ariz. 20, 29, 881 P.2d 352, 361 (1994). In imposing
12 discipline, it is appropriate to consider the facts of the case, the ABA's standards
13 imposing lawyer discipline, and the proportionality of discipline imposed in analogous
14 cases. *Matter of Bowen*, 178 Ariz. 283, 286, 872 P.2d 1235, 1238 (1994).

15 In determining the appropriate sanction, Arizona considers the ABA's standards
16 for imposing lawyer sanctions (the "Standards"). *In re Zawada*, 208 Ariz. 232, 236, 92
17 P.3d 862, 866 (2004). In applying the standards, consideration must be given to the
18 duty violated, the lawyer's mental state, the actual or potential injury caused by the
19 misconduct, and the existence of aggravating or mitigating factors. *See* Standard 3.0.

20 **B. Duties Violated**

21 The duties violated are discussed in Section IV (Violations) above.

22 The theoretical framework provided by the ABA Standards states that if there are
23 multiple acts of misconduct, the sanction should be based upon the most serious
24 violation, with the other violations being considered as aggravating factors. *See In re*
25 *Moak*, 205 Ariz. 351, 353, 71 P.3d 343, 345 (2003). Bar counsel suggests that the
26 violations in Count 2 relating to the deficient representation of Mr. Rains are the more
27 serious allegations, and that violations in Count One (unauthorized practice of law)
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1 should be considered in aggravation. (See transcript at 25:10-26:3). The Hearing
2 Officer agrees.

3 C. Wagner's Mental State

4 Judge Teilborg's orders suggest that Wagner knowingly failed to communicate
5 with Mr. Rains to notify him of a status conference as required by a prior court order.

6 Because Wagner defaulted, it is deemed admitted that she "knowingly"
7 disobeyed an obligation under the rules of a tribunal in violation of ER 3.4(c), and
8 "willfully" violated court orders in violation of Rule 53(c).

9 D. Actual or Potential Injury Caused by the Misconduct

10 An important issue in this matter is whether Wagner's violations caused "serious
11 injury or potentially serious injury," or only caused "injury or potential injury."

12 No evidence was presented indicating that Wagner's unauthorized practice of
13 law, resulting from her summary suspension for failure to comply with her mandatory
14 continuing legal education obligations, caused any serious injury.

15 Of more concern is her conduct in the Rains case. Mr. Rains testified at the
16 aggravation and mitigation hearing. He testified that his lawsuit in Federal District
17 Court was not dismissed. (Transcript 20:14 – 10:16). He also did not pay Wagner any
18 fees. Rather, he only paid her for the filing fee and service of process charges.
19 (Transcript 20:25 – 21:9). While Mr. Rains' lawsuit was delayed by Wagner's
20 violations, it was not dismissed.

21 The commentary to Standard 4.42 indicates that the need to hire a replacement
22 attorney, and the loss of a fee do not necessarily constitute "serious injury."
23 Consequently, Wagner's violations only caused "injury or potential injury" to Mr.
24 Rains. The delay in Mr. Rains lawsuit also did not constitute serious or potentially
25 serious interference with a legal proceeding. See Standard 6.21.

26 Mr. Rains testified that Wagner also represented him in a personal injury lawsuit
27 to recover for injuries he sustained to his arm in an altercation with another individual.
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1 See transcript at 18:10 – 19:8; 21:10 – 22:19). Wagner apparently filed the lawsuit, but
2 then did not pursue it, causing it to be dismissed. *Id.* Because the injury was sustained
3 in October, 2002 (See transcript at 22:12 – 22:14), the statute of limitations for such a
4 claim has presumably now expired. Such neglect of Mr. Rains personal injury case
5 would be considered “serious injury.” See, e.g., *In re Parks*, 1999 Ariz. LEXIS 100 at
6 *7 (1999) (finding “serous injury” when claim was barred by statute of limitations).
7 Because this conduct was not alleged in the Complaint, however, the Hearing Officer is
8 reluctant to find “serious injury” based on such uncharged conduct.

9 E. Aggravating Circumstances and Mitigating Circumstances.

10 After determining the violation, the attorney’s mental state, and the level of
11 injury or potential injury, the Standards require consideration of any aggravating or
12 mitigating factors. See Standard 9.1.

13 1. Aggravating Factors

14 Aggravating factors which may be considered are listed in Standard 9.22(a)
15 through Standard 9.22(j). Aggravating factors relevant to Wagner’s case are discussed
16 below.

17 9.22(c). Pattern of Misconduct

18 Wagner’s repeated failures to respond to orders from Judge Teilborg, requests
19 from the State Bar for information, and to this disciplinary proceeding evidences a
20 pattern of misconduct.

21 9.22(e). Bad Faith Obstruction of the Disciplinary Proceeding By
22 Intentionally Failing to Comply With the Rules or Orders of the
23 Disciplinary Agency

24 As described in the preceding paragraph, Wagner knowingly and repeatedly
25 failed to respond to Judge Teilborg, the State Bar, and these disciplinary proceedings.
26 “Failure to cooperate with disciplinary authorities is a significant aggravating factor.”
27 *In re Pappas*, 159 Ariz. 516, 527, 768 P.2d 1161, 1172 (1988).
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1 9.22(g). Refusal to Acknowledge Wrongful Nature of Conduct

2 Wagner practiced law while suspended for failure to comply with her MCLE
3 requirements. See paragraphs 4 and 5 of Complaint which are deemed admitted. When
4 contacted by the State Bar regarding her practice before Judge Wing while on
5 suspension, Respondent failed to acknowledge the wrongful nature of her conduct, and
6 instead told the State Bar it had made a mistake. See paragraph 11 of Complaint which
7 is deemed admitted.

8 9.22(h). Vulnerability of Victim

9 Based on the testimony of Mr. Rains at the aggravation and mitigation hearing,
10 the hearing officer finds that Mr. Rains was vulnerable, and was not in a realistic
11 position to handle the various litigation matters he had entrusted to Wagner without the
12 assistance of an attorney.

13 9.22(j). Indifference to Making Restitution

14 Defendant was sanctioned \$196.00 for her failure to comply with various court
15 orders. There is no indication that Wagner has made any attempts to pay the \$196.00.
16 Although it is not clear to the hearing officer whether she has the ability to pay the
17 \$196.00, it does not appear she has made any attempts to pay the balance over time.
18 Rather, it appears she simply ignored the sanction.

19 2. Mitigating Factors

20 No evidence was presented of any mitigating factor. However, the record
21 discloses one potentially relevant factor.

22 9.32(k). Imposition of Other Penalties or Sanctions

23 As mentioned above, Wagner has already been sanctioned by Judge Teilborg for
24 her failure to cooperate in preparing the pretrial management conference memorandum.

25 3. Balancing of Aggravating and Mitigating Factors

26 The Hearing Officer finds that the aggravating factors far outweigh the
27 mitigating factors in this case.
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1 F. Sanction

2 The State Bar has asked that Wagner be suspended for six months and one day.
3 While this sanction is certainly within the range allowed by the Standards, and
4 supported by prior cases, the Hearing Officer believes that in light of Wagner's repeated
5 disregard of her obligations to the United States District Court, the State Bar of Arizona,
6 and this hearing officer of the Arizona Supreme Court, disbarment is the appropriate
7 sanction.

8 Either Wagner's unauthorized practice of law, or her defiance of Judge'
9 Teilborg's orders, considered alone would not necessarily support more than a
10 suspension under the Standards. The Hearing Officer finds, however, when considered
11 together, along with the aggravating factors discussed above, the increased sanction of
12 disbarment is appropriate. In the Hearing Officer's opinion, it appears that the interests
13 of society will no longer be served by permitting Wagner to continue to practice her
14 profession as an attorney. *In re Tarletz*, 163 Ariz. 548, 555, 789 P.2d 1049, 1056
15 (1990).

16 Wagner's blatant disregard of Judge Teilborg's orders, the State Bar's requests
17 for information, and this disciplinary proceeding borders on contempt for the legal
18 system, undermines the profession's efforts at self-regulation, and casts a shadow over
19 the integrity of the justice system. *In re Brown*, 184 Ariz. 480; 483, 910 P.2d 631, 634
20 (1996).

21 In response to the State Bar's request for information regarding her unauthorized
22 practice of law, Wagner informed the State Bar that she was closing her law office and
23 leaving the state. See ¶ 11 of the Complaint, which is deemed admitted. This suggests
24 that Wagner abandoned her law practice. Standard 4.41(a) states that disbarment is
25 appropriate when a lawyer abandons the practice and causes serious or potentially
26 serious injury to a client. Although it is not clear that Mr. Rains suffered serious or
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1 potentially serious injury,¹ this subsection of the Standards indicates that abandonment
2 of practice is very serious misconduct. The Hearing Officer believes that when
3 considered together with the other misconduct in this case, the abandonment of practice
4 lends additional support to a recommendation of disbarment.

5 The Hearing Officer believes that nothing short of disbarment would
6 appropriately serve the purposes of protecting the public, deterring future misconduct,
7 and instilling public confidence in the Bar's integrity. See *In re Redeker*, 177 Ariz. 305;
8 310, 868 P.2d 318, 323 (1994).

9 If Wagner ever wishes to practice law in Arizona again, she should be required to
10 provide clear and convincing evidence that she has been rehabilitated, that she is
11 competent, and that she poses no further threat to members of the public. See, e.g., *In re*
12 *Arrotta*, 208 Ariz. 509; 512, 96 P.3d 213, 216 (2004).

13 G. Proportionality

14 The last step in determining if a particular sanction is appropriate is to assess
15 whether the discipline is proportional to the discipline imposed in similar cases. *In re*
16 *Peasley*, 208 Ariz. 27; 41, 90 P.3d 764, 778 (2004). "This is an imperfect process
17 because no two cases are ever alike." *In re Owens*, 182 Ariz. 121, 127; 893 P.2d 1284,
18 1290 (1995). Because perfect uniformity cannot be achieved, the Arizona Supreme
19 Court has long recognized that the discipline in each situation must be tailored for the
20 individual case. *In re Piatt*, 191 Ariz. 24; 31, 951 P.2d 889, 896 n.5 (1997). The
21 Hearing Officer has attempted to do so in this case.

22 In support of its request for a six month and one day suspension, the State Bar
23 relies on *In re Merchant*, 2000 Ariz. LEXIS 87 (2000), and *In re Bingham*, 2002 Ariz.
24 LEXIS 64 (2002). In *Merchant*, the attorney failed to carry out her duties as a court-
25 appointed arbitrator and failed to appear at an order to show cause hearing. As in the
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27 ¹ If Mr. Rains testimony regarding the dismissal of his personal injury lawsuit,
28 which was not charged in the complaint, is considered, then there is "serious injury,"
and disbarment would be plainly justified.

1 present case, there was no evidence whether the respondent had paid the fine imposed at
2 the order to show cause hearing. In that case, the hearing officer found the failure to
3 hold the hearing as ordered, and to appear for the order to show cause hearing, caused
4 only injury or potential injury, as opposed to the serious injury or potentially serious
5 injury. Thus, Merchant was suspended for six months and one day. In *Bingham*, the
6 attorney similarly failed to serve as an arbitrator, failed to appear at an order to show
7 cause hearing, and failed to cooperate with the State Bar. Like Merchant, he was
8 suspended for six months and one day.

9 The Hearing officer finds that these two cases are distinguishable in that neither
10 case involved violations of duties owed to the respondent attorneys' clients. Duties to
11 clients are among an attorneys' most important duties. *In re Augenstein*, 178 Ariz. 133,
12 136, 871 P.2d 254 (1994). Wagner's case is also more serious because she engaged in
13 the unauthorized practice of law while suspended.

14 The Hearing Officer believes that cases such as *In re Edson*, 2001, Ariz. LEXIS
15 213 (2001) and *In re Bachstein*, 1995 Ariz. LEXIS 114 (1995) are more analogous. In
16 *Edson*, the attorney failed to appear at a hearing while representing a client, and
17 subsequently failed to appear at an order to show cause hearing. Edson also failed to
18 perform work for another client, failed to respond to the client's inquiries, and delayed
19 in returning the money paid by the client. Edson failed to respond to the State Bar's
20 requests for information, and was defaulted for failing to answer the State Bar's
21 complaint. Unlike Wagner, Edson did appear and testify at the aggravation and
22 mitigation hearing. The court found that Edson's conduct had caused serious or
23 potentially serious injury, and disbarred him.

24 *Bachstein* is very similar to this case. An attorney failed to respond to a
25 summary judgment motion until after the Court had heard oral argument, and then failed
26 to respond to an application for attorneys' fees and costs. 1995 Ariz. LEXIS 114. He
27 then filed an appeal for the client after he had been suspended for failure to comply with
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1 the mandatory continuing legal education requirements. *Id.* The attorney then failed to
2 respond to the State Bar, or participate in the disciplinary proceedings. *Id.* The
3 Disciplinary Commission commented that:

4 It is apparent that Bachstein has not only abandoned his
5 practice, but has abandoned these disciplinary proceedings, as well.
6 While the Standards indicate a suspension may be appropriate for
7 the underlying conduct, the Commission cannot ignore Bachstein's
8 complete failure to participate in any way in these proceedings. Had
9 he made even the minimum amount of effort to represent himself in
10 these proceedings, the Commission may well have been convinced
11 that disbarment would be inappropriately harsh. An isolated incident
12 of failure to diligently handle a client's case would, in all likelihood,
13 not result in disbarment. However, that isolated incident, viewed in
14 conjunction with practicing while suspended, failing to respond in a
15 disciplinary proceeding, and the presence of numerous aggravating
16 factors, leads the Commission to agree with the Hearing Committee
17 that Bachstein "lacks the character, ethics, and fitness to practice law
18 in the State of Arizona." The Commission recommends that
19 Bachstein be disbarred.

20 The Commission's observations regarding Bachstein apply equally to Wagner in the
21 present case.

22 Wagner also engaged in the unauthorized practice of law. "The unauthorized
23 practice of law is a serious ethical violation, and one that would usually result in a
24 suspension, at least." *In re Axford*, 2002 Ariz. LEXIS 18 (2002), quoting, *In re Stevens*,
25 178 Ariz. 261, 263, 872 P.2d 665, 667 (1994). A fairly exhaustive examination of
26 discipline cases considering unauthorized practice of law was made in *In re Axford*,
27 2002 Ariz. LEXIS 18 (2002), and will simply be incorporated by reference. Although
28 the unauthorized practice of law alone would likely merit a more modest sanction, when
considered with Wagner's other violations, it adds additional impetus for the sanction of
disbarment. *In re Harrison*, 2002 Ariz. LEXIS 107 (2002).

Although the Supreme Court attempts to achieve proportionality when imposing
discipline, it has recognized that the sanction in each situation needs to be tailored to
facts of the case. *In re Wolfram*, 174 Ariz. 49, 59, 847 P.2d 94, 104 (1993). The
commentary to Standard 4.41 provides that disbarment is appropriate if the evidence

1 demonstrates that the respondent cannot or will not conform to the required ethical
2 standards. The Hearing Officer finds that taken as a whole, Wagner's conduct
3 establishes that she cannot or will not conform to required ethical standards.

4 In light of the unique circumstances of this case, the Hearing Officer believes
5 that nothing short of disbarment will adequately protect the public, deter future
6 misconduct, and instill confidence in the integrity of the Bar.

7 **VI. CONCLUSION**

8 For the reasons discussed above, the Hearing Officer recommends that Wagner
9 should be disbarred, and should be ordered to pay the costs of these proceedings.

10 DATED: October 7, 2005

11 HEARING OFFICER 7M

12
13 By 

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15 Suite 1100
16 2800 North Central Avenue
17 Phoenix, Arizona 85004-1043

18 COPY of the foregoing mailed
19 October 7, 2005, to:

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22 4201 North 24th Street, Suite 200
23 Phoenix, Arizona 85016-6288
24 Bar Counsel

25 Cindy L. Wagner
26 851 North 44th Drive
27 Show Low, Arizona 85901
28 Respondent



2 This is the address on the certified mail receipt signed by Wagner on June 3, 2005.